



AMENDED SUMMARIZED MEETING MINUTES

**CITIZEN CODE OF ETHICS TASK FORCE
REGULAR MEETING
PINNACLE CONFERENCE ROOM
7575 EAST MAIN STREET
SCOTTSDALE, ARIZONA
JANUARY 31, 2006**

PRESENT: Art DeCabooter, Chairman
Jim Derouin
Margaret Dunn (arrived 5:17 p.m.)
Jim Bruner
Rita Saunders-Hawranek
Dewey Schade
Ned O'Hearn

STAFF PRESENT: Jay Osborn
Teri Traaen

ALSO PRESENT FOR ALL OR PART OF THE MEETING:

Henry Becker
Tim Delaney, Center for Leadership, Ethics & Public Service
Michael S. Kelly
George Knowlton
Tim Montgomery
Stuart Ridge
Carl Reiter

CALL TO ORDER

The regular meeting of the Citizen Code of Ethics Task Force was called to order by Chairman DeCabooter at 5:05 p.m.

ROLL CALL

Chairman DeCabooter noted that all members of the Task Force were present as stated above.

OPEN CALL TO THE PUBLIC

Carl Reiter noted the public perception that City Council disregards Robert's Rules of Order and is undemocratic.

Tim Montgomery agreed with Mr. Reiter on the importance of the Task Force in defending the democratic process. Recent events underline the need for a Code of Ethics for Scottsdale.

Michael Kelly encouraged the Task Force to consider enforcement, which is essential to putting an ethics program in place. Public trust and public interest should be defined within the framework of the code of ethics. Recent events at City Council highlight the need for enforcement, and show that the City Attorney can be in a conflict of interest. Ordinances providing for ethics enforcement may need to be enacted. He urged the Task Force to create an ethics program, not just a code.

Stuart Ridge commented that when the City Attorney's office goes to an outside lawyer for an opinion, the perception is that they select a lawyer whose opinion suits their agenda.

George Knowlton commented that the Task Force is doing a good job. Something needs to be done to stop incidents like the recent one, which has tarnished the City's reputation.

Henry Becker presented Chairman DeCabooter with a copy of the Tacoma Code of Ethics, which he remarked deals with issues where Council Members are asked to reveal information. As elected politicians, they owe an explanation to the public.

APPROVAL OF THE JANUARY 17, 2006 MINUTES

Mr. Delaney informed the Task Force that he and Mr. Osborn went over the draft minutes. A copy of their revisions and proposed changes are included in the packet received by Task Force Members.

Mr. O'Hearn noted that the remarks on the first paragraph of page 8 were mistakenly attributed to him; however, Ms. Robberson had made that comment.

MR. DEROUIN MADE A MOTION TO ACCEPT THE AMENDED MINUTES OF THE JANUARY 17, 2006 MEETING SUBMITTED BY MR. DELANEY, WITH THE CORRECTION NOTED. MR. BRUNER SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

1. Discussion on Proposed Components of Ethics Policy/Program

Chairman DeCabooter announced that the discussion would focus on the January 31st draft of the code, labeled "**DRAFT (Jan. 31 blend - O'Hearn/Derouin, Derouin with framework and comments)**". Dr. Traaen noted that copies were available for the audience.

Mr. Delaney noted that communications about the draft were channeled through City staff, who consulted with the City Attorney's office to ensure full compliance with the Open Meeting Law.

Mr. Osborn commented that adopting Administrative Regulation # 320 is the responsibility of the City Manager, as opposed to City Council. Mr. Osborn noted that a discussion of Administrative Regulation # 320 is on the agenda tonight.

Mr. Schade expressed concern that Administrative Regulation # 320 be implemented as is. Chairman DeCabooter said this would be discussed under agenda item # 2.

Mr. Osborn informed the Task Force that the draft of Administrative Regulation # 320 previously reviewed by the Task Force is substantially complete. The City Manager has discretion with regard to the implementation, but he felt she would be attentive to the Task Force's opinions.

Mr. Derouin noted that City employees are included in paragraphs 3 and 4, Training and Guidance Materials, even though the Code of Ethics is to apply to elected and appointed officials.

In response to a question from Mr. O'Hearn about the recommendation to appoint a special task force to review and recommend modifications to the City's financial disclosure obligations, Mr. Derouin explained that when this was discussed earlier, it turned out to be a complicated topic. The current Task Force does not have time to deal with that area. He felt that if a good Code of Ethics is enacted, another group could review the issue of financial disclosure.

Mr. O'Hearn was hesitant about the Task Force recommending another Task Force.

Mr. Delaney noted that part of the difficulty with the City's financial disclosure regulations stems from A.R.S. § 38-545. He suggested the Task Force could send a separate letter to City Council, suggesting that the City Attorney's office review the regulation.

Mr. O'Hearn suggested that Mr. Delaney expand the matrix he drafted to note that the legislation on financial disclosure is complex and that City Council should be aware of the issues. A discussion ensued.

Mr. Delaney noted that conflict of interest laws apply to City employees. The City Manager may adopt a form similar to the one on page 5 for employee use.

Mr. Bruner suggested obtaining acknowledgement from officials and employees indicating that they understand and will abide by the Code of Ethics after training. In response to a comment by Mr. Schade about training, Mr. Delaney noted he had used the phrase "comprehensive and meaningful ethics training," to ensure the quality of the program. Dr. Traaen suggested that the phrase "including specific examples" be added.

Mr. O'Hearn outlined the rationale for the format of the Code. He stated that ethics and good behavior are not the same thing; therefore, he had not included some of the language regarding manners. He drafted sections on the areas that Task Force Members had earlier identified as being most important. Noting that Mr. Kelly and other members of the public have spoken on the importance of inclusiveness and public participation, he found this is a gray area that is more a question of policy than of ethics.

Mr. Derouin led a discussion on the Code of Ethical Behavior. Mr. Delaney explained the rationale for his proposed revisions. In the third paragraph on page 2, he agreed with Mr. Bruner's suggestion to have individuals acknowledge that they will abide by the Code of Ethical Behavior. Mr. Bruner commented that the matrix is part of the Code of Ethical Behavior and should be incorporated into the body of the Code rather than as an attachment.

Mr. Delaney assured the Task Force that he was keeping detailed notes of the revisions discussed. He will work on incorporating the Task Force's substantive recommendations and polishing the language. Staff will distribute the next draft before the next meeting.

Mr. Derouin noted Mr. Delaney's revisions to the section on Conflicts of Interest. Mr. Delaney explained why he had placed a query by the sentence: "Officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interest, but where active participation might continually raise the perception of undue influence," noting concerns that this has the effect of disenfranchising the people who voted for the Councilman. A discussion ensued on the pros and cons of this position.

Mr. Bruner questioned the word "immediately" in the second paragraph of the Conflicts of Interest section. After discussion, Task Force Members agreed to revise the paragraph as follows:

"When a conflict of interest exists, the official involved must immediately (a) refrain from participating in any manner in the City's decision-making processes on the matter, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to, any member of the City Council or any City employee, contractor, agent, charter officer, board or commission member or agency (other than the City Attorney when seeking legal advice regarding the conflict of interest), and (b) declare the specific nature and character of the interest of the public record by updating their Personal Interest Disclosure Form as soon as practical."

Mr. Delaney told Task Force Members that their work is clarifying state law, which is helpful to others.

Discussing the section on gifts, Mr. O'Hearn noted that he had removed the dollar limit (currently \$25) and used the expression "token mementoes" instead.

In a discussion about the section on openness, Mr. Bruner asked what the City's General Plan has to do with ethics. Mr. O'Hearn noted that a mindset of openness is desirable, but that a policy of public participation is a philosophy of government that is not necessarily linked to ethics. Openness is transparency in government. Public participation is a matter of procedure.

Mr. Delaney noted that the General Plan has been adopted by the City and is a guideline policy statement. Mr. O'Hearn noted that in his opinion, the Code of Ethical Behavior should be the authoritative statement about ethics and should not refer to other documents.

Mr. O'Hearn said that he had written the section on the preservation and availability of public documents in a way that Task Force Members may consider onerous.

A discussion ensued. Task Force Members posed questions on what constitutes a public document, what the rules on retention are, and how e-mail messages should be handled. Mr. Derouin noted that this is an area where training and a clear policy are needed. It is critical for officials to be aware of the issues. Discussing the section on undue influence on subordinates, Mr. O'Hearn said the second paragraph mirrors the City Charter. He added the first paragraph.

Mr. Derouin spoke about the role of the City Attorney. Task Force Members debated whether there should be an exception to the requirement that the City Attorney be present at all Executive Sessions for those that deal solely with the job status of a charter City official.

Mr. Schade considered that the City Attorney should be present at all Executive Sessions without exception. The consensus of other Task Force Members was that dealing with personnel matters involving charter City officials should take place without the presence of the City Attorney. Mr. Delaney observed that before Council Members go into an Executive Session, the City Attorney could remind them of the Open Meeting Law.

Mr. Delaney questioned whether the first sentence of the section is appropriate, asking: If the City Attorney is not "assertive, outspoken and proactive" on occasion, is that an ethical lapse? Mr. O'Hearn said his intent was to restrict this to the area of executive sessions and the Open Meeting Law. Task Force Members agreed that the section heading should be "Executive Sessions," and that the first paragraph should be stricken. A reminder that the content of discussions in executive sessions is confidential should be added.

Mr. O'Hearn suggested moving the section on enforcement to page 1. Task Force Members concurred.

Mr. Derouin stated that the City Attorney's mandate should encourage a proactive approach to issues of openness and ethics. His draft proposal calls for complaints regarding ethical issues relating to appointed members of boards, commissions, and task forces to be submitted to the City Attorney. With regard to elected officials, the City Attorney does have a conflict of interest. His proposal states that the City Attorney refer the complaint to a panel of retired state and federal court judges living outside of Scottsdale. The consensus of the meeting was that this is an excellent provision.

Ms. Dunn noted the danger of frivolous complaints brought to embarrass officials. Mr. Delaney undertook to rewrite the section to include finding of sufficient reason to move forward. Mr. Schade commented that there is also a danger that complaints would never be investigated. Mr. Derouin acknowledged that this does create a loophole. Mr. Bruner noted that no system is perfect, but there are checks and balances within the system.

Mr. Delaney cautioned that this provision does create a magnet for people to file complaints and smear officials. A balance must be found to protect both those who want to serve the community and also citizens with legitimate complaints.

Task Force Members discussed whether three retired judges are needed in every case. Mr. Osborn noted that cost is a factor and that City procurement processes must be followed.

Mr. Delaney questioned whether the City has any legal authority to reprimand officials. Mr. Osborn told the meeting that in the opinion of outside legal counsel, an amendment to the City charter would be needed to establish this authority. Mr. Derouin suggested removing the phrase "or reprimand" from the final sentence of the second paragraph. Task Force Members agreed that the possibility of a finding of unethical behavior by a panel of judges would encourage elected officials to act ethically. Mr. Delaney noted that in the case of a conflict of interest, the Attorney General's office or the County Attorney would be involved, as that is a criminal matter. He undertook to rewrite the enforcement section.

Mr. O'Hearn clarified that he is to redraft the section on openness, and redraft the role of City Attorney section into a section on executive sessions. He asked the other Task Force Members to review minutes of earlier meetings and e-mail Dr. Traaen if any points need clarification. Mr. Delaney is rewriting the other sections. Dr. Traaen cautioned that the minutes of the current meeting would not be available until the end of this week.

2. Discussion of Administrative Regulation # 320

Chairman DeCabooter noted that this topic had been discussed during the deliberations regarding the Code of Ethical Behavior.

3. Future Meeting Schedule and Agenda Items

The next meeting is scheduled for February 7, 2006.

A discussion ensued on whether this will be the final meeting of the Task Force. Members agreed that if a further meeting were necessary, it would be scheduled at that time.

Members will decide on the procedure for presenting the Code of Ethical Behavior to City Council at the meeting.

4. Open Call to the Public

Mr. Kelly addressed the meeting, noting that he had raised the question about the General Plan and openness because an earlier draft distributed on January 9, 2006 mentioned a wish for openness and referenced the goals set by City Council in 2004 in the General Plan. In his opinion, the basic authority comes from the General Plan because it was adopted by City Council and ratified by the electorate. The Scottsdale General Plan carries elements that are not required by the State. Future revisions of the General Plan may include reference to the Code of Ethics.

Mr. Kelly stated that it is important to clarify the ethical limits of constituent service. The City Attorney's job description should include ethical expertise and sensitivity.

Mr. Becker told the Task Force that it is important that City Council Members not take advantage of their position for personal gain.

Adjournment

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:42 p.m.

Respectfully submitted by:

Valerie Wegner
Administrative Secretary, Human Resources

Reviewed by:

Art DeCabooter, Chair

Officially approved by the Citizen Code of Ethics Task Force on February 7, 2006.